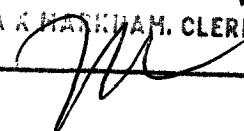


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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2011 SEP 13 PM 4:17

SANDRA A. HASKIN, CLERK
BY: 

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

STATE'S RESPONSE TO
DEFENDANT'S MOTION TO
MODIFY RELEASE CONDITIONS

Assigned to Hon. Warren R. Darrow and
Hon. David Mackey

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Modify Release Conditions. The State of Arizona opposes the defendant's motion to reduce the amount of bond based upon the following memorandum of points and authorities

MEMORANDUM OF POINTS AND AUTHORITIES

Procedural History

During December 2008 and January 2009, Judge Thomas Lindberg heard nearly four full days of testimony regarding the State's request to hold Defendant without bond. The Court also heard argument regarding GPS monitoring at a hearing on March 10, 2009.

This Court determined the Defendant had the opportunity to commit this murder based upon Defendant's proximity to the scene, the time frame in which the murder occurred, and Defendant's

1 lack of alibi. After careful consideration, the Court determined that \$2,500,000 cash or security
2 bond was appropriate.

3 After the ruling was issued, Defendant quickly filed a Motion for Reexamination of
4 Conditions of Release which was denied by the Court without evidentiary hearing on April 30,
5 2009. Defendant filed another motion to reexamine conditions of release in August, 2009.
6 Hearings were held and the motion was denied November 21, 2009. In December, 2009 Defendant
7 filed yet another motion to reconsider his conditions of release. A hearing was held in January,
8 2010 and once again the Court denied the defense motion to modify release conditions.

9 After the State dismissed its allegation of the death penalty, on May 28, 2010 the Court
10 modified Defendant's release conditions by reducing the bond amount from \$2,500,000 to
11 \$1,000,000. Judge Lindberg decision for the \$1,000,000 bond was made after being acutely aware
12 of the facts.

13 In December, 2010 the defendant was indicted on eight (8) new felony charges directly
14 related to the murder for crimes in connection with the anonymous e-mail, voice in the vent and the
15 Estate of Virginia Carol Kennedy. Bond is currently set at \$1,000,000. Most recently this Court
16 denied Defendant's motion to modify release conditions on May 2, 2011.

17 Since May, 2011, nothing has changed in this case with the exception of Defendant's
18 successful motion to continue the trial. The allegation concerning Defendant's loss of a home made
19 game board is too inconsequential to address in comparison to the senseless brutal death of Virginia
20 Carol Kennedy.

21 **Legal authorities:**

22 The terms and conditions of release should be such to reasonably ensure a Defendant's
23 appearance and the safety of the public. *Rule 7.2(a), Ariz.R.Crim.P.* In determining amount of
24

1 bail, the Court should consider circumstances of each case, including among other factors: nature
2 and gravity of offense charged; the character and reputation of the accused; the accused previous
3 criminal record, if any; measure of punishment which may be inflicted; and ability of accused to
4 give bail, which includes his own pecuniary condition as well as possession of friends able and
5 willing to give bail for him. See *Gusick v. Boies*, 72 Ariz. 233, 233 P.2d 446 (1951). This Court
6 must take into account the following enumerated matters based upon available information in
7 determining the method of release or the amount of bail.
8

9 **I. The Defendant is a flight risk**

10 The Defendant carefully started planning an escape from law enforcement on the night
11 victim, Carol Kennedy, was murdered. On July 3, 2008 the sheriff's office seized the Defendant's
12 passport. Eight (8) days later on July 11, 2008 Defendant applied for a replacement passport. In the
13 application, the Defendant lied when he wrote that he "couldn't find the original one." This is a
14 telling example of Defendant's intent to flee.
15

16 On August 2, 2008 the Defendant bought a new BMW motorcycle and a GPS map for
17 Mexico. In the bikes storage bags, Defendant had \$15,000.00 cash, a GPS, maps to Mexico and
18 materials to physically change his appearance. One can hardly call this an inconsequential fact of
19 Defendant's intent to flee.
20

21 Renee Girard, defendant's ex-girlfriend, informed the State that the Defendant had buried a
22 "get away bag" near his Alpine Meadows residence sometime in mid August of 2008. Later, the
23 sheriff's office found the buried get away bag with a phone, shoes and clothing inside.

24 On August 28, 2008 and long before the Defendant was indicted for the murder of Virginia
25 Carol Kennedy, he ordered four books from Amazon. The books were titled: (1) "How to be
26 Invisible"; (2) "International Fugitive"; (3) "How to Disappear without Changing your Identity":

1 and (4) "Advanced Fugitive - How to Run, Hide and Survive". The Defendant's intention to run
2 from authorities was obvious to even his 16 year old daughter who wrote in her journal "my dad's
3 considering running."

4 There is direct evidence proving beyond a reasonable doubt the Defendant, if given the
5 slightest chance, will escape to foreign country. Any reduction of the existing bond will jeopardize
6 Defendant's appearance at trial.
7

8 **II. The Defendant committed felony crimes while in custody**

9 While in the custody of the Sheriff's office, the Defendant involved his 16 year old daughter
10 in a scheme to send an anonymous email purporting to have information about the person or persons
11 that murdered Carol Kennedy. The Defendant invented a story about who killed Carol Kennedy. He
12 then manipulated his daughter in to going to an Internet café in Phoenix and sending the story by
13 way of an anonymous email to the State and his own defense counsel.
14

15 During the previous homicide trial the defense counsel moved to admit the anonymous email
16 for use in trial. Judge Lindberg ruled the anonymous email would be admitted. By allowing his
17 defense counsel to use this forged evidence, the Defendant committed a fraud upon the Court. This
18 Defendant knows no bounds when it comes to manipulating his family, the courts and his attorneys.
19

20 The defendant is charged with committing new felony offenses while in custody and the
21 proof is evident and the presumption great the defendant committed these offenses. The
22 defendant has shown through his actions a total disregard for the law. This conduct proves the
23 Defendant will do what ever it takes without regard to whom in his way to break away from the
24 grasp of the law.

25 **III. The Courts have limited power to interfere with the Sheriff's operation of the jail**
26

1 The sheriff's office decision to place the defendant in protective custody is their decision
2 and it cannot be overruled by the Court. It is well established in Arizona that it is the county sheriff
3 that is empowered to manage the county jail. In *Arpaio v. Baca*, 217 Ariz. 570, 177 P.3d 312,
4 (2008) the court stated:

5
6 The power to "[t]ake charge of and keep the county jail ... and the prisoners in the county
7 jail" belongs to the sheriff. A.R.S. § 11-441(A)(5); A.R.S § 31-101 (2002) ("The common jails in
8 the several counties ... shall be kept by the sheriffs of the counties in which they are respectively
9 located."). The broad grant of power to county sheriffs to manage jail facilities necessarily
10 includes the authority to regulate jail visitation schedules. As we observed in *Judd v. Bollman*,
11 166 Ariz. 417, 418, 803 P.2d 138, 140 (App.1991) (holding that justice of the peace's order
12 designating the county jail at which a prisoner would serve his sentence violated the separation of
13 powers doctrine):

14 [A]bsent any constitutional violations with regard to prisoners, the
15 judiciary has no authority to usurp the functions of the executive
16 branch. Courts have limited authority to interfere with a sheriff's
17 duties to maintain and operate the county jails pursuant to the
18 Arizona Constitution and A.R.S. §§ 11-441(5) and 31-101, and
19 then only to determine whether specific constitutional violations
20 exist and in doing so to order narrow remedies to correct these
21 violations.

22 **IV. The victim's mother and brother oppose defendant's request**

23 Ruth K. and John K. have always been strongly opposed to any reduction in Defendant's
24 bond. They know this Defendant and strongly believe that he would flee at the first opportunity. The
25 hard evidence cited above corroborates their feelings.

26 It is Ruth's belief, which is supported by the facts, that Defendant's actions have delayed
justice from being served in the murder of her daughter. Ruth, at age 86, has waited over three years

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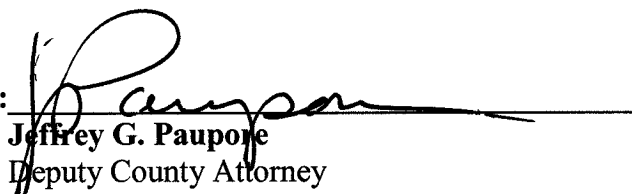
1 to see justice for her daughter and she believes the Defendant should remain in the Yavapai county
2 jail.

3 **Conclusion**

4 The Defendant has manipulated the legal system to gain an advantage without regard for the
5 law, for the victims or how his illegal conduct effected his family. The Defendant continues to break
6 the law even while he is incarcerated. How can this Defendant be expected to follow any order of
7 this court? The answer is that he will not. He will do what ever it takes to get out from under these
8 charges and that includes escaping this jurisdiction. The State believes the cash bond of
9 \$1,000,000.00 is reasonable under the circumstances and adamantly opposes any further
10 reduction.
11

12 **RESPECTFULLY SUBMITTED** this 13th day of September, 2011.
13

14 **Sheila Sullivan Polk**
15 **YAVAPAI COUNTY ATTORNEY**

16 By: 
17 **Jeffrey G. Paupore**
18 Deputy County Attorney
19

20 **COPY** of the foregoing **emailed** this
21 13th day of September, 2011, to:

22 Honorable Warren R. Darrow
23 Division PTB
24 Yavapai County Superior Court
Via email to Diane Troxell: DTroxell@courts.az.gov

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